

Article Alert Service Rule of Law/Administration of Justice

1/2005

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FIFTEEN YEARS OF GUIDELINES SENTENCING: AN ASSESSMENT OF HOW WELL THE FEDERAL CRIMINAL JUSTICE SYSTEM IS ACHIEVING THE GOALS OF SENTENCING REFORM.

United States Sentencing Commission. November 2004.

This study is a comprehensive review of the research literature and sentencing data to assess how well the guidelines have achieved the goals for sentencing reform established by Congress in the Sentencing Reform Act of 1984. These goals include increased certainty and transparency of sentences, increased severity of sentences for certain types of serious crimes, and reduced sentencing disparity, including racial and ethnic disparity.

[Note: The full report takes a long time to download; users may wish to either download just the Executive Summary or go to the Table of Contents page and select portions of the report.]

Full Report: http://www.ussc.gov/15_year/15_year_study_full.pdf [pdf format, 246 pages]

http://www.ussc.gov/15_year/15year.htm [Table of Contents page, sections in pdf format, various pagings]

Executive Summary and Preface:

http://www.ussc.gov/15 year/executive summary and preface.pdf [pdf format, 16 pages]

♣ COMPETING DEFINITIONS OF THE RULE OF LAW: IMPLICATIONS FOR PRACTITIONERS

Rachel Kleinfeld Belton.

Carnegie Endowment for International Peace (CEIP). January 2005.

Definitions of the rule of law fall into two categories: (1) those that emphasize the ends that the rule of law is intended to serve within society (such as upholding law and order, or providing predictable and efficient judgments), and (2) those that highlight the institutional means or attributes believed necessary to actuate the rule of law (such as comprehensive laws, well-functioning courts, and trained law enforcement agencies). For practical and historical reasons, legal scholars and philosophers have favored the first type of definition. Practitioners of rule-of-law development programs tend to use the second type of definition. This paper analyzes the challenge of effectively defining the rule of law, through an examination of both types of definitions, the historical background of each, and the implications of each for rule-of-law development efforts.

http://www.carnegieendowment.org/files/CP55.Belton.FINAL.pdf [pdf format, 44 pages]

♣ GIDEON'S BROKEN PROMISE: AMERICA'S CONTINUING QUEST FOR EQUAL JUSTICE

American Bar Association, Legal Aid & Indigent Defendants Standing Committee.

December 2004

"During the 40th anniversary of the U.S. Supreme Court's decision in Gideon v. Wainwright (which established the right to counsel in state court proceedings for indigents accused of serious crimes), the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants held a series of public hearings to examine whether Gideon's promise is being kept. Throughout 2003, extensive testimony was received from expert witnesses familiar with the delivery of indigent defense services in 22 states representing a wide cross-section of regions, populations, and delivery systems. This comprehensive report represents the culmination of a painstaking analysis of hundreds of pages of testimony compiled from the hearings, leading to the inescapable conclusion that, forty years after Gideon, the promise of equal justice for the poor remains unfulfilled in this country." Interactive map "highlights the 22 states from which witnesses were invited to present testimony at the hearings. Click on each state

for a short summary of testimony regarding that state's indigent defense problems, reform efforts, and model approaches."

Full report:

http://www.abanet.org/legalservices/sclaid/defender/brokenpromise/fullreport.pdf [pdf format, 76 pages]

Executive summary:

http://www.abanet.org/legalservices/sclaid/defender/brokenpromise/execsummar y.pdf [pdf format, 5 pages]

FREEDOM OF EXPRESSION ADJUDICATION IN EUROPE AND AMERICA: A CASE STUDY IN COMPARATIVE CONSTITUTIONAL ARCHITECTURE Frederick Schauer

Harvard's JFK School of Government. February 2005

"Under the conventional wisdom, American freedom of expression doctrine is largely about categorization and about efforts to exclude categories of expression from any constitutional scrutiny, while the approach in other liberal constitutional democracies is more honest, more open, and more straightforward about balancing freedom of expression interests against other social values. On closer analysis, however, it appears that the differences are less than they appear, and what differences that exist are largely a function of differential experience with freedom of expression problems and differential commitments regarding the substance of freedom of expression and also regarding the role of the courts." http://ksgnotes1.harvard.edu/research/wpaper.nsf/rwp/RWP05-019/\$File/rwp 05 019 schauer.pdf [pdf format, 26 pages]

♣ INTERNET GAMBLING: OVERVIEW OF FEDERAL CRIMINAL LAW Charles Doyle.

Library of Congress. Congressional Research Service. November 29, 2004.

In the United States gambling has traditionally been a matter for state law, usually overseen by state gambling or gaming commissions. State officials and others have expressed concern that the Internet may be used to bring illegal into their jurisdictions, thereby introducing gambling elements from other states or from other countries. American law has always reflected ambivalence towards gambling. Antigambling laws were common in colonial America, yet even in the Northeast, where these laws were most numerous, the lottery was a popular form of public finance. A majority of states continue to outlaw most forms of gambling, but most also continue to employ a lottery as a means of public finance and to

allow several other forms of gambling as well. In fact, at least forty-six states permit charitable bingo; forty-three allow parimutuel betting (usually on horse or greyhound races); thirty-seven have lotteries; twenty-nine have Indian gambling establishments; and thirteen allow casino or riverboat gambling. Americans spend almost \$73 billion a year on legalized gambling. Estimates on the amount Americans spend on illegal gambling vary widely, ranging from over \$30 billion to over \$380 billion a year. Illicit Internet gambling implicates at least six federal criminal statutes. It is a federal crime to (1) conduct an illegal gambling business, 18 U.S.C. 1955; (2) use the telephone or telecommunications to conduct an illegal gambling business, 18 U.S.C. 1084; (3) use the facilities of interstate commerce to conduct an illegal gambling business, 18 U.S.C. 1952; (4) conduct the activities of an illegal gambling business involving either the collection of an unlawful debt or a pattern of gambling offenses, 18 U.S.C. 1962; (5) launder the proceeds from an illegal gambling business or to plow them back into the business, 18 U.S.C. 1956; or (6) spend more than \$10,000 of the proceeds from an illegal gambling operation at any one time and place, 18 U.S.C. 1957.

[Note: There is a 6-page abridged version of this report at: http://www.ipmall.info/hosted_resources/crs/RS21984_041129.pdf [pdf format, 48 pages]

OPERATIONAL LAW HANDBOOK 2005.

Derek I. Grimes, editor.

United States Army, Judge Advocate General's Legal Center and School. November 2005.

The 2005 Operational Law Handbook published by the U.S. Army Judge Advocate General [JAG] Corps provides a comprehensive map of the terrain of military law, from the legal basis for the use of force to domestic operations to the laws governing intelligence and special operations. It provides references and describes tactics and techniques for the practice of operational law. Operational law may be broadly defined as domestic and international law associated with the planning and execution of military operations in peacetime or hostilities. It includes, but is not limited to, Law of War, law related to security assistance, training, mobilization, pre-deployment preparation, deployment, overseas procurement, the conduct of military combat operations, anti- and counterterrorist activities, status of forces agreements, operations against hostile forces, and civil affairs operations. The Operational Law Handbook is not a substitute for official references. Like operational law itself, the Handbook is a focused collection of diverse legal and practical information.

https://www.jagcnet.army.mil/jagcnetintranet/databases/operational+law/clamo.ns f/(JAGCNetDocID)/C7719006CE434DF385256F3B006E39EA/\$FILE/OpLaw%20 Handbook%2005%20PDF.pdf [pdf format, 610 pages]

♣ HATE CRIME STATISTICS, 2003.

United States Department of Justice, Federal Bureau of Investigation (FBI). November 22, 2004.

According to this report, antagonism toward a particular race, religion, sexual orientation, ethnicity/national origin, or physical or mental disability prompted crimes against 9,100 victims in the U.S. during 2003. The data are aggregated from hate crime reports submitted by local, state, tribal, and federal law enforcement agencies throughout the nation. A review of the data by incident showed that almost all of the incidents were classified as single-bias (involving only one bias motivation). A breakdown of the single-bias incidents by the type of bias revealed that 51.4 percent were motivated by racial bigotry, 17.9 percent were caused by religious intolerance, 16.6 percent were the result of a sexualorientation bias, and 13.7 percent were triggered by an ethnicity/national origin bias. The remainder involved a bias against a disability. The survey categorizes the data by type of location and found that the majority of hate crime incidents (32.0 percent) took place in or on residential properties. Highways, roads, alleys, or streets were the settings for 17.6 percent of the reported incidents, and 11.8 percent took place at schools and colleges. The remaining incidents were distributed among various other locations.

http://www.fbi.gov/ucr/03hc.pdf [pdf format, 166 pages]

LAW ENFORCEMENT OFFICERS KILLED AND ASSAULTED, 2003. United States Department of Justice, Federal Bureau of Investigation (FBI). November 8, 2004.

In 2003, 52 U.S. law enforcement officers were feloniously killed. Forty-six separate incidents in 25 states claimed the lives of these officers. Trend data showed that the number of officers feloniously slain was 4 fewer than in 2002, 10 more than the 42 slain in 1999, and 27 fewer than the 79 officers killed in 1994. Local, state, tribal, and federal law enforcement from more than 10,100 agencies submitted data to the FBI's Uniform Crime Reporting (UCR) Program about officers who were killed and assaulted. Of the 52 officers feloniously slain in 2003, 14 were killed during traffic stops or pursuits. Eleven were killed in arrest situations, 10 officers while investigating disturbance calls, 9 in ambush

situations, 6 while investigating suspicious persons or circumstances, and 2 while transporting or handling prisoners. Offenders used firearms to kill 45 of the victim officers. Of these officers, 34 were slain with handguns, 10 were killed with rifles, and 1 officer was killed with a shotgun. Six officers were intentionally struck by vehicles and 1 officer was beaten to death with a police baton. In addition to those killed, the report notes that 57,841 officers were assaulted while performing their duties in 2003, and 16,339 officers suffered injuries as a result of these attacks. Assaults on officers were most often committed with personal weapons (hands, fists, feet, etc.), used in 81.0 percent of the attacks. Firearms were used in 3.2 percent of assaults on law enforcement officers, knives or cutting instruments in 1.9 percent, and other dangerous weapons were used in 13.9 percent of assaults on officers.

http://www.fbi.gov/ucr/killed/leoka03.pdf [pdf format, 98 pages]

OJJDP ANNUAL REPORT 2003–2004

Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice. December 2004

"OJJDP addressed a broad array of problems during the past 2 years. Priority areas included child sexual exploitation, female delinquency, gangs, and truancy. The activities described in this report illustrate the Office's continuing commitment to supporting programs that have the greatest potential for combating delinquency, reducing the victimization of children, and improving the juvenile justice system. The report also summarizes the latest information available on juveniles taken into custody and lists OJJDP publications released during FY 2003–2004."

http://www.ncjrs.org/pdffiles1/ojjdp/206630.pdf [pdf format, 63 pages]

♣ PUNITIVE DAMAGE AWARDS IN LARGE COUNTIES, 2001 Bureau of Justice Statistics, U.S. Department of Justice. March 2005

"Presents findings on civil trials concluded in 2001 in the Nation's 75 largest counties that produced a punitive damage award. Information reported in numerical tables includes the types of civil cases receiving punitive damages, punitive damage award amounts, a comparison of punitive damages in bench and jury trials, and types of litigants in trials with punitive damages. In addition, information on plaintiff and defendant post-trial and appellate activity in civil trials with punitive damages is presented. Trends in punitive damage awards in civil jury trials during the 1992 and 2001 study periods are also described."

♣ CENSUS OF PUBLICLY FUNDED FORENSIC CRIME LABORATORIES, 2002

Bureau of Justice Statistics, U.S. Department of Justice. February 2005

"Reports on the organization, functions, budget and expenditures, staffing, workload, and forensic backlog in the Nation's more than 350 publicly funded crime labs. Additional topics included in this report examine contracting with external laboratories, quality control, training and research conducted by public forensic laboratories. The report compliments earlier data collections and statistical reports from BJS documenting similar issues in forensic DNA laboratories."

http://www.ojp.usdoj.gov/bjs/pub/pdf/cpffcl02.pdf [pdf format, 16 pages]

ASYLUM SEEKERS IN EXPEDITED REMOVAL: A STUDY AUTHORIZED BY SECTION 605 OF THE INTERNATIONAL RELIGIOUS FREEDOM ACT OF 1998.

United States Commission on International Religious Freedom. (USCIRF). February 8, 2005.

[Note: The U.S. Commission on International Religious Freedom (USCIRF) was established by the International Religious Freedom Act of 1998 (IRFA). USCIRF is an independent and bipartisan federal agency created to monitor religious freedom in other countries and advise the President, Secretary of State and Congress on how best to promote it.]

In 1996, President Bill Clinton signed the Illegal Immigration and Immigrant Responsibility Act (IIRAIRA), the most comprehensive immigration reform legislation in over 30 years. Among other reforms, the legislation established "Expedited Removal", which was intended to strengthen the security of America's borders, without closing them to those fleeing persecution. Specifically, prior to IIRAIRA, immigration inspectors could not compel an improperly documented alien to depart the United States. The inspector had the discretion to offer the alien the opportunity to withdraw his application for admission, or to refer the alien to an immigration judge for a hearing. If the inspector did refer the alien to an immigration judge, the alien could be detained until the hearing, but would generally be released due to bed-space shortages. Under IIRAIRA, immigration inspectors were authorized to summarily remove aliens who lacked appropriate

travel documents, or who obtained their travel documents through fraud or misrepresentation. Concerned, however, that bona fide asylum seekers not be removed to countries where they may be persecuted, Congress also included provisions to prevent the Expedited Removal of refugees fleeing persecution. This report finds that the compliance with some of the procedures varied markedly from place to place and were applied inconsistently from judge to Besides inconsistent application of the regulations, the study also condemns the widespread practice whereby "asylum seekers are consistently detained in jails or jail-like facilities, which the experts found inappropriate for non-criminal asylum seekers." The authors of the study urge "the incoming Secretary of Homeland Security to ensure that it is no longer he - but a high ranking official who reports to him – who is responsible for coordinating refugee and asylum matters among the various bureaus. Without day-to-day oversight of asylum policy and its implementation department-wide, the flaws in the system identified in this Study cannot be effectively addressed, leaving asylum seekers in Expedited Removal at risk of being returned to countries where they may face persecution."

Full Report:

http://www.uscirf.gov/reports/ERSrpt/ERS_RptVollI.pdf [pdf format, 449 pages] Executive Summary:

http://www.uscirf.gov/reports/ERSrpt/execsum.pdf [pdf format, 9 pages]

LAWSUITS AGAINST STATE SUPPORTERS OF TERRORISM: AN OVERVIEW

Jennifer K. Elsea

Library of Congress. Congressional Research Service. Updated April 4, 2005

Since 1996, American victims of international terrorist acts supported by certain States designated by the State Department as supporters of terrorism — Cuba, Iran, Libya, North Korea, Sudan, Syria, and until recently, Iraq — have had the option of bringing suit in federal court to seek monetary damages. Holders of judgments against these States, however, have encountered difficulties in their efforts to collect, despite congressional efforts to make blocked (or "frozen") assets of such States available for attachment by judgment creditors. A recent court decision invalidating plaintiffs' cause of action under the 1996 law raises uncertainties about the future of lawsuits against terrorist States. This report provides an overview of these issues, including a summary of a lawsuit against Iran by former hostages, Roeder v. Islamic Republic of Iran, and a lawsuit against Iraq by former prisoners of war (POWs), Acree v. Republic of Iraq, as well as a brief synopsis of relevant legislative proposals (H.R. 1321, H.R. 865, H.Con.Res.

93). These issues are covered in greater depth in CRS Report RL31258, Suits Against Terrorist States By Victims of Terrorism.

http://fpc.state.gov/documents/organization/45186.pdf [pdf format, 6 pages]

LETENTION OF AMERICAN CITIZENS AS ENEMY COMBATANTS Jennifer K. Elsea.

Library of Congress. Congressional Research Service. Updated February 24, 2005.

The law of war divides persons in the midst of an armed conflict into two broad categories: combatants and civilians. This fundamental distinction determines the international legal status of persons participating in or affected by combat, and determines the legal protections afforded to such persons as well as the legal consequences of their conduct. To limit exposure of civilians to military attacks, combatants are required, as a general rule, to distinguish themselves from civilians. Combatants who fail to distinguish themselves from civilians run the risk of being denied the privilege to be treated as prisoners of war if captured by the enemy. This report analyzes the authority to detain American citizens who are suspected of being members, agents, or associates of Al Qaeda, the Taliban, or other terrorist organizations as "enemy combatants." In June 2004, the Supreme Court issued three decisions related to the detention of "enemy combatants." In Rasul v. Bush

[see: http://www.supremecourtus.gov/opinions/03pdf/03-334.pdf], the Court held that aliens detained at the U.S. Naval Station at Guantánamo Bay, Cuba, have access to federal courts to challenge their detention. In Hamdi v. Rumsfeld [see: http://www.supremecourtus.gov/opinions/03pdf/03-6696.pdf], a plurality held that a U.S. citizen allegedly captured during combat in Afghanistan and incarcerated at a Navy brig in South Carolina was entitled to notice and an opportunity to be heard by a neutral decision-maker regarding the government's reasons for detaining him. The government instead reached an agreement with the petitioner that allowed him to return to Saudi Arabia, where he also holds citizenship, subject to certain conditions. The Court in Rumsfeld v. Padilla [see: http://www.supremecourtus.gov/opinions/03pdf/03-1027.pdf] overturned a lower court's grant of habeas corpus to another U.S. citizen in military custody in South Carolina on jurisdictional grounds, sending the case to a district court in the Fourth Circuit for a new trial.

http://www.fas.org/sgp/crs/misc/RL31724.pdf [pdf format, 54 pages]

Bureau of Justice Statistics, U.S. Department of Justice. April 2005

"Presents data on prison and jail inmates, collected from National Prisoner Statistics counts and the Annual Survey of Jails in 2004. This annual report provides for each State and the Federal system, the number of inmates and the overall incarceration rate per 100,000 residents. It offers trends since 1995 and percentage changes in prison populations since midyear and yearend 2003. The midyear report presents the number of prison inmates held in private facilities and the number of prisoners under 18 years of age held by State correctional authorities. It includes total numbers for prison and jail inmates by gender, race, and Hispanic origin as well as counts of jail inmates by conviction status and confinement status. The report also provides findings on rated capacity of local jails, percent of capacity occupied, and capacity added."

http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim04.pdf [pdf format, 14 pages]

♣ IDENTITY THEFT: THE INTERNET CONNECTION

Marcia S. Smith

Library of Congress. Congressional Research Service. March 16, 2005

Concern is growing about identity theft — where one person assumes the identity of another by stealing personally identifiable information (PII), such as credit card or Social Security numbers. High profile incidents disclosed in early 2005 involving ChoicePoint, Bank of America, and LexisNexis, where the PII of more than a million Americans may have been compromised, have refocused congressional attention on this issue. Many associate the rise in identity theft cases with the Internet, but surveys indicate that comparatively few victims cite the Internet as the source of their stolen PII. Still, the Internet may play a role, particularly through a practice known as "phishing." Congress already has passed several laws to address identity theft, and continues to debate whether additional action is needed.

http://fpc.state.gov/documents/organization/44534.pdf [pdf format, 6 pages]

♣ JOURNALISTS' PRIVILEGE TO WITHHOLD INFORMATION IN JUDICIAL AND OTHER PROCEEDINGS: STATE SHIELD STATUTES
Carey Lening, Henry Cohen
Library of Congress. Congressional Research Service. March 8, 2005

Absent a statutory or constitutional recognition of journalistic privilege, a reporter may be compelled to testify in legal, administrative, or other governmental

proceedings. To date, thirty-one states and the District of Columbia have recognized a journalists' privilege through enactment of press "shield laws," which protect the relationship between reporters, their source, and sometimes, the information that may be communicated in that relationship. The journalists' privilege is distinct from other recognized privileges, in that the privilege vests only with the journalist, not with the source of the information. This report briefly provides an overview of general trends among the states individual statutes. The remainder of this report sets forth the full text of the state shield statutes.

http://fpc.state.gov/documents/organization/44110.pdf [pdf format, 47 pages]

♣ TREATMENT OF "BATTLEFIELD DETAINEES" IN THE WAR ON TERRORISM

Jennifer Elsea.

Library of Congress. Congressional Research Service. Updated January 13, 2005.

In June, 2004, the U.S. Supreme Court ruled in Rasul v. Bush that U.S. courts have jurisdiction to hear challenges on behalf of some 550 persons detained at the U.S. Naval Station in Guantánamo Bay, Cuba, in connection with the war The Court overturned a ruling that no U.S. court has against terrorism. jurisdiction to hear petitions for habeas corpus on behalf of the detainees because they are aliens detained abroad, but left questions involving prisoners' rights and status unanswered. The 9/11 Commission recommended a common coalition approach for the treatment of such detainees. The Bush Administration earlier deemed all of the detainees to be "unlawful combatants," who may, according to Administration officials, be held indefinitely without trial or even despite their eventual acquittal by a military tribunal. Fifteen of the detainees have been designated as subject to the President's Military Order of November 13, 2001, making them eligible for trial by military commission. In answer to the Supreme Court's decision, the Pentagon instituted Combatant Status Review Tribunals to provide a forum for detainees to challenge their status as "enemy combatants." The President's decision to deny the detainees prisoner-of-war (POW) status remains a point of contention, especially overseas and among human rights organizations, with some arguing that it is based on an inaccurate interpretation of the Geneva Convention for the Treatment of Prisoners of War (GPW), which they assert requires that all combatants captured on the battlefield are entitled to be treated as POWs until an independent tribunal has determined otherwise. This report provides an overview of the law of war and the historical treatment of wartime detainees, in particular the United States' practice for determining their status, and describes how the detainees' status might affect their rights and treatment. The report also reviews the current status of petitions for habeas corpus filed on behalf of detainees held at Guantánamo Bay and summarizes activity of the 108th Congress related to detention in connection with the war against terrorism.

http://www.fas.org/irp/crs/RL31367.pdf [pdf format, 52 pages]